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REPT. OF COMMISSIONERS INTO CLAIMS MADE BY TOWNSHIP OF PROTON

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REPORT

OF THE

COMMISSIONERS

APPOINTED TO ENQUIRE INTO THE CLAIMS

MADE BY THE

TOWNSHIP OF PROTON

TO CERTAIN SUMS OF MONEY PAYABLE AS ALLEGED TO THAT MUNICIPALITY UNDER THE ACT 16 VICT. CAP. 159, SEC. 14.

PRINTED BY ORDER OF THE LEGISLATIVE ASSEMBLY.

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PRINTED BY WARWICK & SONS, 68 AND 70 FRONT STREET WEST,
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REPORT.

To the Honourable,

Sir ALEXANDER CAMPBELL, K.C.M.G.,

Lieutenant-Governor of the Province of Ontario.

May it please your Honour :

The undersigned, appointed and authorized by Commission under the Great Seal of the Province, dated 19th August, 1891, to enquire into the claims made by the Township of Proton, in the County of Grey, to certain sums of money payable as alleged, to that municipality for public improvements therein, under the fourteenth section of the Act passed in the sixteenth year of the reign of Her present Majesty, and chaptered 159, or otherwise, in right of the sales of Grammar School Lands in said township ; to take evidence if there were any in support of such claim and to report the same, and to inquire into and report on the facts and evidence whether the said Township of Proton is entitled, under said statute and the Orders-in-Council of the late Province of Canada, to be paid any and what sum towards public improvements, beg leave respectfully to report :—

2. In the reign of His late Majesty, King George III., a large quantity of land in Upper Canada was set apart to form a fund for the establishment and maintenance of Grammar Schools in Upper Canada.

3. The Act of 1839, 2 Vict., cap. 10, provided :—

Sec. 3.—"That the moneys now remaining in the Receiver-General's hands unexpended, arising from the sale of school lands, or which may come into his hands applicable to the purposes of this Act, shall be invested in the debentures of this Province at six per cent. interest, and the proceeds placed under the control of the Council of King's College, for the purposes of this Act.

Sec. 4—"That it shall and may be lawful for the Lieutenant-Governor, by and with the advice of the Executive Council, to set apart two hundred and fifty thousand acres of the waste lands of the Crown in this Province, to be sold in like manner as other Crown lands, at a price not less than ten shillings per acre, and the proceeds thereof to be paid into the hands of the Receiver-General from time to time, to be appropriated in such manner, and for the Grammar Schools as hereinbefore provided."

4. The Act of 1841, 4 and 5 Vict., cap. 19, provided that

Sec. 2.—"The moneys arising from the sales of the school lands now remaining in the Receiver-General's hands unexpended, or which may come into his hands applicable to the purposes of this Act, shall be invested in the debentures of that part of this Province, heretofore Upper Canada, at six per cent. interest, and the annual interest or rents thereof, placed under the control of the Governor or person administering the Government of the Province for the time being, to be distributed by and with the advice and consent of the Executive Council of the said Province, among such districts within that part of the Province formerly called Upper Canada, as may more immediately require assistance owing to the state of the school house or other circumstance."

Sec. 3.—"And be it enacted that within three months after the passing of this Act, the Council of King's College, or their Bursar or Treasurer, shall transfer and pay over to the Receiver-General as aforesaid, all debentures unredeemed and sums of money arising from unexpended arrears of interest which may have accrued thereon, and be at present held by the authority of the Act hereby repealed, by the said Council or Trea-

"surer, on account of the proceeds of the sale of school lands as aforesaid, to be by the said "Receiver-General invested in debentures, and the interest and rents thereof appropriated "and distributed as hereinbefore mentioned.

5. In 1853, the year (and at the same session) in which the Act establishing the Upper Canada Improvement Fund was passed, "An Act to amend the Law relating to Grammar Schools in Upper Canada" was also passed.

The first section of this Act, (16 Vict., cap. 186), provides.

"That all moneys arising from the sale of lands set apart or which may be hereafter "set apart for the encouragement of Grammar Schools in Upper Canada, and which "shall not have been specially granted or vested in or for the benefit of any particular "College, Grammar School, or other seminary or place of education, or otherwise depart- "ed with by the Crown, and all annual grants which have been or may hereafter, be "made by Parliament, or which may be, or become otherwise available from any other "sources for that purpose, shall form a Fund to be called the Upper Canada Grammar "School Fund, and shall be invested in Government or other securities by the direction "of the Governor in-Council.

6. In 1849, an Act (12 Vict., cap. 200) was passed, to create a Common School Fund. One of the means provided by that Act for the creation of the Fund was, the setting apart of one million acres of land in what was known as the Huron Tract. This Act as re-enacted by the Revised Statutes of 1859, cap. 26, provided that those lands should be :—

Sec. 1.—"Disposed of by the Commissioner on such terms and conditions as may by "the Governor in Council be approved, and the money arising from the sale or disposal "of any portion of the said lands shall remain or be invested and applied towards creat- "ing a capital sum sufficient, at the rate of six per centum, to produce a clear sum of "four hundred thousand dollars per annum, and such capital and the income therefrom "shall form the Common School fund."

And section 2 also re-enacted, provided.

"And the said Fund and the income thereof shall not be alienated for any purpose "whatever, but shall remain a perpetual Fund for the support of Common Schools, and "the establishment of township and parish libraries.'

7. In a memorandum dated 3rd July 1852, Mr. Rolph, then Commissionor of Crown "Lands, recommended "that in order to facilitate the settlement of the Counties of "Bruce and Grey the School Lands be reduced from 12/6 to 10s Currency per acre, pay- "able by annual instalments in ten years, with interest, and that all future sales in the "said Counties shall be on the following terms, viz :—that there shall be actual and im- "mediate and continuous settlement during five years : that there shall be cleared "annually within the first five years five acres upon each and every lot of one hundred "acres, (or fifty acres free grant as the case may be) with a dwelling house built, eigh- "teen feet by twenty-six, upon each lot : that the occupant shall neither sell or rent, nor "permit any person whatever to sell or cut any of the growing wood upon said parcel of "land excepting for the clearance of the land, for his fuel and for the buildings and fence "he may erect upon the same, until the said lot is paid for and patented : that until paid "for and patented all wood cut for other objects on the said parcel of land shall be deem- "ed to have been cut by the occupant, and may be taken and carried away by any per- "son duly authorized by the Government to that effect, without any formality whatever : "that when the land has been paid for and patented, the timber, though owned by the "patentee, shall be held liable without any claim for remuneration by the purchaser or "those claiming through him, to any dues the Legistature may please hereafter to impose "on timber generally." . . . . .

"That application be made to the Legislature to allow 2s-6d per acre of the pur- "chase money to be expended on the local roads and harbours, and that no deed issue "until the terms of settlement and payment are fullfilled."

8. On 7th July 1852, the following Order-in-Council was passed :—

"Upon the memorandum submitted by the Commissioner of Crown Lands relative to "the School Lands in the Counties of Grey and Bruce, the Committee of Council recom "mend that the reduction in price, from 12s-6d to 10s an acre as suggested be approv- "ed, and that the regulations laid down in the said report be adopted, and further, that "a measure be submitted to Parliament to authorize the expenditure of a sum equal to "2s-6d an acre of the purchase money, on the improvement of the roads and harbours "within the said Counties : and the Committee further recommend that not more than "200 acres be sold to any one individual, except upon the special recommendation of the "Commissioner of Crown Lands, approved by His Excellency in Council.

9.—"An Act to amend the law for the sale and settlement of the Public Lands," "(16 Vict., cap. 159) was passed in the following Session. The 14th Section of this "Act is as follows :—

"XIV.—It shall be lawful for the Governor in Council to reserve out of the proceeds "of the School Lands in any county, a sum not exceeding one-fourth of such proceeds, as "a fund for public improvements within the county, to be expended under the direction "of the Governor-in-Council, and also to reserve out of the proceeds of unappropriated "Crown Lands in any county, a sum not exceeding one-fifth, as a fund for public improve- "ments within the county, to be also expended umder the direction of the Governor-in- "Council. Provided always, that the particulars of all such sums and the expenditure "thereof shall be laid before Parliament within the first ten days of each Session : provid- "ed always, that not exceeding six per cent on the amount collected, including surveys, "shall be charged for the sale and management of Lands forming the Common School "Fund, arising out of the One Million of Acres of Land set apart in the Huron Tract."

10.—No Order-in-Council directing that the reservation authorized by this Act should be made, or determining what portion of the proceeds of School Lands or of Crown Lands should be reserved, was passed.

11.—In a Report dated 30th June, 1854, Mr. Morin, then Commissioner of Crown Lands, recommended that a large quantity of School Lands and of Crown Lands in the Townships of Grey, Howick, and Turnberry, in the County of Huron, be opened for sale, and that the School Lands in the Counties of Bruce, Perth, and Grey should be advertised for sale at the same time : and he suggested "in the absence of any general regulations "being yet adopted, under the 2nd and 25th Sections of the Land Act, that the School "Lands at least in that County (Huron), be open for sale, subject to actual settlement at "ten shillings per acre, in conformity with the regulations adopted by the Minute in "Council of the 7th July, 1852, but that the extent of improvements be limited to two "acres annually (for five years), on each 100 acres, with a house (instead of 18x26 feet) "16x18 feet."

"The Committee recommended that the said Report be approved and adopted, the "upset price per acre for School Lands to be ten shillings, and seven shillings and sixpence "per acre for the Crown Lands."

12. But it appears that from the time of the passing of the Act, 16 Vict. c. 159, the maximum proportion of the proceeds of Crown lands and of Common School lands authorized by the Act, and one-fifth of the proceeds of Grammar School lands were actually reserved. An Order-in-Council of 27th February, 1855, based upon a recommendation of the Secretary of Agriculture, directed that £35,589 be taken from the Common School Lands Improvement Fund, and from the Crown Lands Improvement Fund, to pay the cost of certain roads and a bridge, in excess of the Parliamentary Grants of £30,000, made for "Opening up the Waste Lands in Upper Canada." Another Order-in-Council, dated 27th March, 1855, authorized the appropriation of £1,000 of the Crown Land Fund for the opening af another road.

13. A memorandum of the Minister of Agriculture, dated 7th December, 1855, said :—

"The Minister of Agriculture also brings under Your Excellency's notice that numerous applications have been made for aid from the Improvement Fund created by the "14th Section of the Land Act, 16 Vict. cap. 159, which authorizes one-fourth of the "proceeds of the sale of School Lands, and one-fifth of those of Crown Lands, to be expended in the several counties in which the sales are effected.

"That none of this fund has yet been set apart from the sales hitherto made, although "an Order-in-Council has passed for the expenditure of £25,000 thereout.

"That it appears requisite that the Crown Land Department should be directed to "apprize the Inspector-General of the amount at the credit of each county, for proceeds "of sale of both Crown and School Lands, that the proportions accruing to the Improvement Fund may be set apart by the Receiver-General for that purpose."

14.—This having been duly approved of, became part of an Order-in-Council, which was held in 1861, to be the Order by which the Improvement Fund was established. Other recommendations were made in the same memorandum, and were likewise approved of. Amongst these, were recommendations that, four sums required for the construction of roads and bridges be taken from the Improvement Fund. On 11th January, 1856, another Order-in-Council was passed, appropriating three sums from the Improvement Fund for the like purposes.

15.—In the books of the Crown Lands Department the Improvement Fund Account was from the first kept in tabulated form, the "Receipts" or "Collections," as they were sometimes called, from each county being placed in three columns, headed respectively "Crown Lands," "Grammar School Lands," and "Common School Lands," and the amounts available for the Improvement Fund in three other columns with the like headings. In this manner also, the statement laid before the Legislature in 1856, as the Act 16 Vict., cap. 159, sec. 14 required, was made up by the Bureau of Agriculture and Statistics. This statement shewed the amounts received from Crown Lands, Grammar School Lands, and Common School Lands, from June 14th 1853, when the Act passed, to 30th June, 1855, and the "amount available" from each of these sources. Statements made up in the same way were submitted to the Legislature in the Sessions of 1858 and 1859. The statement submitted in 1857 was made up in a different form.

16.—In all those statements the amounts given as "available" for the Improvement Fund were a fifth of the sums received on account of sales of Crown Lands, a fourth of the sums received on account of sales of Common School Lands, and a fifth of the sums received on account of the sales of Grammar School Lands.

The Commissioners were unable to find any Order-in-Council or Departmental Regulations directing that such "proportions" of "the proceeds" of those lands should be reserved, or that the proportion of the proceeds of Grammar School Lands reserved should be one-fifth.

17.—On 28th July, 1856, the following Order-in-Council was passed :—

"In reference to the Fund for Public Improvements, formed under the 14th section "of the Act, 16 Vict., cap. 159.

"The committee recommend that the funds derived from the sale of lands in each "particular township or other municipality, and applicable to the purposes of this fund, "and not already apportioned, be applied to the making, maintaining, altering or improving of the roads or bridges in each of those townships or other municipalities respectively; and be for this purpose distributed and disposed of by and through the municipal "council of each such township or other municipality; each such council to report to the "Bureau of Agriculture the manner of expenditure of all such moneys, on the first days "of January and July in each year, and at any intermediate time within ten days after "having been called upon so to do by that Department."

18.—In his report for 1856, (Sessional papers 1857, vol. 9, appendix 54), under heading "Application of the Fund arising from the sale of Crown, Common School and Grammar School Lands" the Minister of Agriculture said :

"The Minister is further able to report that the proportion of the proceeds of sales "of Crown Lands and Common School and Grammar School Lands, available under the "14th section of 16 Vict., cap. 159, viz.: the fifth of the Crown and the fourth of School "Lands have been made available, to a very large extent, for colonization purposes in the "Counties of Huron, Bruce, Wellington and Grey. There has also been a small expendi- "ture out of this Fund in the Counties of Wellington and Perth."

"The total amount of this Fund from the passing of the Act in June, 1853 up to the "31st December, 1855 is as below :—

One-fifth of sales of Crown Lands	£22,369-12s-7d
One-fourth of sales of Common School Lands	20,153-15s-2d
" " Grammar "	2,095-9s-7d
Total proceeds to above date	£44,618-17s-4d

Do. do. for the year ending December 31st, 1856 :—

Crown Lands	£7,763-2s-10d
Common School Lands	5,883-11s-5d
Grammar School Lands	766-14s-9d
	£14,413-9s-0d

19. In the Session of 1858, "A Statement of Upper Canada Improvement Fund for "the years 1855, 1856 and 1857," signed by the Auditor-General, was submitted to the Legislature with the report of the Inspector-General. In this the amount reserved for the Improvement Fund for the period from 14th June, 1853, to 31st December, 1855, is given, and the amounts reserved for the years ending 31st December, 1856, and 31st December, 1857. A careful computation, in which the difference in the dates at which the accounts closed was taken into consideration, showed that the mode of calculating the amounts "available for the Improvement Fund from the proceeds of Crown lands, grammar school "lands and common school lands followed in making out the return from the Crown "Lands Department, was followed by the Auditor-General also.

20. This statement shows that of the £45,121 13s. 2d. paid into the Improvement Fund up to 31st December, 1855, the sum of £8,650 12s. 1d. remained unpaid and undistributed on 31st December, 1857. The statement makes no distinction between the amounts received from Crown lands, grammar school lands and common school lands. All were then put together, and the total was dealt with as one fund. No parts of the amounts credited to the fund for the years 1856 and 1857 was distributed before 31st December, 1857.

21. On 30th October, 1858, the following Order in Council was passed :

"On a report dated 16th of April, 1857, from the Honourable the Minister of Agri- "culture, reporting that under the 14th section of the Act, 16 Vict., Cap. 159, an Order "in Council was passed appropriating one-fourth of the grammar school and common "school funds for public improvements within the townships whence the fund is derived. "That the fund derived from the sale of school lands to 31st December, 1855, has been "appropriated.

"That the amount arising from the sale of common school lands for 1856 is £5,883 "11s. 5d., and that from the grammar school lands for the same year only £766 14s. 9d. "That the latter amount when divided amongst the various townships from which it has "been derived will be of very inconsiderable value for public improvements ; but would "be of very great value in aiding grammar schools in various ways ; for instance, in

"securing masters for classical schools—many applications for additional schools have "been made—and recommending that in future none of the proceeds of the sales of the "grammar school lands in Upper Canada be diverted from the purpose for which they "were originally intended, save the proportions of the sales to the 31st December, "1855, above alluded to.

"The Committee recommend that the fund arising from grammar school lands be "reserved, as suggested by the Minister of Agriculture."

22. The Commissioners have been unable to find any Order in Council "appropri- "ating one-fourth of the grammar and common school funds for public improvements." [Unless the Order in Council of 7th December, 1855, already quoted, did so.]

23. The Order in Council of 30th October, 1858, was carried out and acted upon by the Government of the day so as to stop any expenditure for local improvements out of the proceeds of grammar school lands reserved after 31st December, 1855. The amounts which passed to the Improvement Fund as the proportion of the proceeds of grammar school lands received in 1856 and 1857 were withdrawn from the fund and transferred to the Grammar School Fund, as appears from the Auditor-General's "Statement of the "Upper Canada Improvement Fund of the years 1855, 1856, 1857 and 1858" (Sessional Papers of 1859, vol. 1, appendix No. 5, paper No. 37).

Amongst the items on the debit side of the account in this statement are the following:

Fund of 1856	$57,653 80	
Less-proportion from grammar schools	3,066 95	
		$54,586 85
Fund of 1857	$57,374 91	
Less-proportion from grammar schools	9,930 58	
		$47,444 33

24. Any portion of the amount paid into the improvement fund, on account of the proceeds of grammar school lands received before 31st December, 1855, which remained undistributed when the order of 30th October, 1858 was passed, was paid to the townships entitled to it. But no portion of the moneys received in payment of grammar school lands after 31st December, 1855, was distributed to the townships.

25. An Order in Council of 14th December, 1841, by which the Governor-in Council assumed the entire control of the grammar school lands of Upper Canada, provided that these lands should thereafter be sold in the same manner and on the same terms as clergy reserve lands were sold, under the regulations approved by Her Majesty in Council. These regulations appear to have been strictly adhered to until 1856, when Hon. Mr. Cauchon, then Commissioner of Crown Lands recommended and an Order in Council was passed to provide, that instead of having a valuation of the lots in Proton then to be offered for sale—as those regulations required—he should be authorized to offer them at a uniform upset price of ten shillings per acre. No changes were made in other respects and therefore these lands were offered for sale not "subject to settlement duties" (as were common school lands from the time of the passing of the Order in Council of 7th July, 1852, based on the recommendation of Dr. Rolph,) and without limitation as to the quantity that may be purchased by one person, as determined by the same Order in Council.

26. The lands of the township of Proton were chiefly grammar school lands. None of the lands of that township formed part of the one million acres set apart in the Huron tract for the Common School Fund.

27. The advertisement offering the Proton lands for sale, was as follows :—

CROWN LANDS DEPARTMENT, TORONTO,
20th November, 1856.

"Notice is hereby given that the undermentioned lots in the Township of Proton, "in the county of Grey, Upper Canada, will be offered for sale by auction, by the resi- "dent Agent William Jackson, Esq., at Durham, in the Township of Bentinck, on (and "after) the twenty second of next month.

"The upset price ten shillings per acre ; one-fifth of the purchase money to be paid "at time of sale ; the remainder in four equal annual instalments with interest."

28. The Crown Lands Department, in the instructions to William Jackson, the agent appointed to sell those lands, said—"These lands being a portion of the original appropriations for grammar schools you will have the goodness in returning sales to keep "them distinct from the collection made on account of the common school fund."

29. The draft of a letter on the files of the Crown Lands Department, dated November 1856, also addressed to William Jackson, Esq., says "Enclosed are sent for "circulation, copies of an advertisement offering for sale the land in the Township of "Proton. These you will take care to circulate as much as possible in the township, as "it is understood that many persons have taken possession of lots, who, if actually re- "siding thereon should be protected, and the lots withheld from public competition.

"A list is sent herewith, giving the precise contents of each lot, and a plan of the "township will also accompany this."

30. Another draft of a letter to William Jackson, undated, says : —"With reference "to your letter of the ninth of December, respecting the sale of lots in Proton which are "claimed by persons in possession, I beg to state that I am of opinion that the squatter "is not entitled to the privilege of purchasing at less than the merchantable value of "the land.

"In selling therefore to squatters, you will be guided by the prices realized at the sale of other lots by auction."

31. The first sale of grammar school lands in Proton was on the 22nd December, 1856 ; another sale took place in January, 1857. At these sales which in the report of the Commissioner of Crown Lands are treated as sales of 1857, over 70,000 acres of land were sold. Nearly all the lots except those occupied by squatters, were offered at public auction, and so keen was the competition, for what were considered the best lots that the price in some cases went as high as thirty shillings an acre, and the average price of all the lands then sold was about fifteen shillings an acre. A very considerable portion was bought by speculators. Lots in the occupation of squatters were retained by them, to be paid for at the average price realized at auction, which was $3 per acre.

32. Of the witnesses who appeared before the commissioners at Hopeville, one who attended the sale to save his land being put up for sale, he being a squatter, stated that the agent William Jackson told him that £1,600 was what would be coming out of that day's sale for Proton.

This was said after the day of sale, and at some time within the four years, within which the Proton land had to be paid for.

Another witness, not a bidder but a squatter, and attending to save his place, heard Jackson say publicly on the day of sale, "there was some money coming back to us."

The next witness, who was present at the sale and bought at the sale, did not hear Jackson make the statements to which the preceding witness had testified, but said

"We were thinking that we were to get something back, and I bought under that expectation."

A following witness, who bought at the sale heard no statement from Jackson, but said that "it was generally reported that we were to get something back."

The last witness went to Jackson before the sale but could get no satisfaction; he did not hear the public statement which a previous witness had stated to have been made by Jackson.

33. The Commissioners are satisfied that Jackson the agent did not make such a statement at the sale.

34. "Of the first instalment of the price of the lands of Proton then sold one-fifth was reserved" for the improvement fund in and included in the amount placed to the credit of that fund for 1857; and this one-fifth was also included in the amount withdrawn from the improvement fund and transferred to the Grammar School fund by the operation of the Order in Council of 30th October 1858.

35. No payment on account of the improvement fund was made to Proton before Confederation.

36. The Commissioners have been unable to find any evidence showing that before Confederation the inhabitants of the Township of Proton made any claim by petition or otherwise for payment for local improvements of any proportion of the proceeds of the Grammar School lands in that township sold on 22nd December 1856, during the year 1857 and up to 30th October 1858.

37. On 29th August 1891, an order of the House of Assembly was passed for copies of any and all resolutions of the council of the Township of Proton, relative to grammar school lands situated in that township, or correspondence of the council regarding the same; also copies of all petitions or memorials from ratepayers of the Township of Proton which tried to show or prove that when they purchased Grammar School lands from the Government it was the distinct or implied understanding that one-fourth of the purchase money was to be returned to them as a fund for improvement within the municipality.

The return made says "There are no resolutions, petitions, memorials or correspondence on file in the Department (of Crown Lands) dealing with or referring to the land improvement fund."

The attitude of the settlers in Proton.

38. The petition in January 1857, of Roland Bell and others to Sir Edmund Head, sets forth that the petitioners are actual settlers and unable to pay the price charged by the Government, 15s. per acre; it would be impossible to pay 10s. per acre in consequence of the shortness of time given, by the Government: prays extension of time and to hold the lands at 10s. per acre.

39. In 1859 the settlers forwarded a very numerously signed petition, stating that they had purchased at a time when the lands were above their real value in Proton when every kind of agricultural products and manual labour were commanding more than double the price then obtainable; that after two years struggling they found it impossible to pay for their lands according to the terms of the sales; that as lands in other parts of the county were sold at 7s 6d. per acre with 10 years for ultimate payment, the like privilege should be conceded to them.

40. This was a petition to the House of Assembly, and states that it was the second that had been forwarded (the first petition mentioned has not been seen).

The above petition is not dated but is marked as received on 22nd of February 1859, at the Crown Land Department.

41. A petition of January 1860 very numerously signed, approved by the members of the township council stated that the petitioners were resident on the Proton lands before being brought into the market, that they expected to buy at $2 an acre, that the lands

not taken up by actual settlers were sold by auction by the local agent and bought up mostly by speculators some of whom got their lands at $2 an acre that being the upset price, while the petitioners, the actual settlers were charged $3 per acre in 5 instalments with interest.

The actual settlers, pray that the lands be reduced to $2 an acre, and 10 years allowed for payment by instalments.

42. On the 16th. of February 1860, William Jackson the local agent, writes to the Commissioner of Crown Lands stating, that to those in possession (meaning the squatters) the uniform price was $3 an acre in accordance with the instructions in departmental etter of the 6th of February 1857, " that the sale of lands in Proton took place at a time of great speculative excitement, and the absence of conditions of settlement tended to encourage keen competition."

In reply 5th June 1860, Mr. Vankoughnet Commissioners of Crown Lands agreed to throw off the interest up to the 1st of January 1860, in favour of actual settlers interest to run from the 1st January 1860, and extend the time of payment of principal and interest 2-12 years from the time originally fixed, that being 8th June 1860.

43. On the 3rd of October 1860, township council again petitioned Mr. Vankoughnet, begging that the Government should appoint Commissioners for the Inspection of the Township, meaning to alleviate their distress.

44. In 1861 the inhabitants of Proton again petitioned for a reduction, and the lands in the hands of actual settlers were in consequence reduced to $2 an acre, and the time extended for the payment.

On the 28th of October, 1861, Mr. Tarbutt, of the Crown Lands Department, made an inspection apparently in consequence of the petition of 1860 and the petition of 1861, and made a report thereon, at the foot of which is a pencil memorandum of the names of the speculators who made purchases.

Mr. Tarbutt reported that the settlers suffered very seriously from the early frosts destroying the wheat crop ; and that great portions of the lands were purchased by absentee speculators. Mr. Tarbutt stated that for the actual settlers or squatters the average price fixed was 15s. an acre, and he recommended allowing them to retain their lands at 10s. per acre, bearing interest from the dates of the original sales. This was approved.

45. In November, 1861, by letter to Crown Lands Agent Jackson, the price of the lots in Proton, upon which there were actual settlers with improvements, was reduced to 10s. per acre, crediting them with over-payments on previous instalments, and it was ordered that in respect of unimproved lots, in default of purchasers completing the purchase, the lands will be resumed and sold at public sale.

Such parties as had purchased more than one lot to be allowed to apply instalments paid on lots to be given up to the lot they desired to retain.

46. On the 16th July, 1862, the municipality of Proton petitioned that as, on account of the regulations of October, 1861, stating that all lands remaining unpaid and unsettled on 1st February, 1862, would be resumed by the Government and offered at public sale, many persons believing such regulations would be carried out had squatted on said lands, no further payments should be received on account of previous sales, and that the lands be sold for actual settlement.

And also declared that $1.50 was the full value of the lands to be advertised for sale.

Mr. Tarbutt reports on the petition : that " the township consisting entirely of Grammar School Lands, actual settlement thereon was not made a condition when the lands were opened for sale in 1856.

" It is therefore to be decided whether the lands shall be sold subject to that condition.

"The upset price should be $2 an acre, that being the minimum price at which lands have been disposed of, payable in five instalments."

47. On 5th December, 1862, in consequence of Mr. Tarbutt's report and recommendation, it was ordered, that actual settlers who had purchased at 15s. per acre, were to be entitled to receive a patent on payment of 10s. an acre.

48. On 16th June, 1864, the township council addressed Lord Monck by petition, stating the lands were sold by auction, but unhappily not sold for actual settlement, hence the meagreness of the population—population then not much over 300 and that they suffered seriously from summer frosts. They prayed that the Government should cause the non-resident lots to be put up for sale to actual settlers only.

49. 21th of January, 1866, Sir Alexander Campbell, then Commissioner, ordered sale to occupants with improvements at a valuation as if wild lands without interest on present value; lots not occupied to be resumed and sold by auction for cash.

1st March, 1867, the Proton Council petitioned for a reduction in the price of land, praying that a revaluation should be made and the lands sold to actual settlers then resident; or that half the purchase money be paid by work on the public roads.

50. On 8th January, 1868, the municipal council of Proton petitioned the Assembly of Ontario, stating that Proton lands had been sold above their value, that farmers suffered by summer frost. They said: "We are likewise in a bad condition as to roads as we do not receive any assistance from the Improvement Fund."

And prayed that "lands sold to residents be reduced in price and the interest thrown off, and the balance of the lands presumably rather given as free grants or at such low prices as will encourage settlement, and to devise some means to cause non-residents to dispose of their lands and pay taxes on such lands yearly."

51. On 20th January, 1871, the municipal council of Proton petitioned the Assembly,

That Government lands be sold for what they will bring, and that lands of non-residents not patented be resumed and sold by the Crown.

52. In the Session of 1871 the Legislature passed an Act (34 Viet. ch. 20) relative to arrears due upon Crown, Clergy and Grammar School lands sold previously to 1st July, 1867, whereby power was given to reduce the price of lands when sold beyond their value or to make such abatement as may appear equitable and just.

In the case of Proton, Commissioners were appointed and they reported that the progress of Proton was not satisfactory, that the settlers had greatly suffered from bad seasons, and that little local improvements had been made.

53. And the Reeve, Mr. Alexander McPhail, in 1871 addressed the Government, stating that although his lands were paid for and he had his patent, he recommended the Government to reduce the price of lands.

54. On 4th December, 1871, an Order in Council was passed authorizing the Commissioner of Crown Lands to take up the report of the Commissioners to deal with each individual case noted, and to make such reduction as he may consider just and equitable.

Accordingly the Crown Lands Department gave notice to the settlers in Proton who deemed themselves purchasers above value to apply for a reduction.

In consequence the settlers did apply, and reductions to a considerable extent, but necessarily varied, according to circumstances, were made.

55. On 19th December, 1871, the Commissioner of Crown Lands presented to the House of Assembly by command of the Lieutenant-Governor, statements of the amounts collected from sales of Common School and Crown lands from 1st day of July, 1867, to the 30th day of June, 1870, on account of sales made between the 13th day of June,

1853, and 7th March, 1861, and a statement of the expenditure made on account thereof in accordance with the 16 Vict. c. 159, section 14, Consolidated Canada chapter 26, section 7, section 2. (Ontario Sessional Papers, 1871-2, No. 6.)

56. Almost immediately after confederation the rights of the municipalities to a fifth of the amounts received between the 6th March, 1861, and 30th June, 1867, in payment for Crown lands sold between 15th June, 1853, and 6th March, 1861, and to a fourth of the amounts received within the same period as the price of Common School lands sold from 14th June, 1853, to March 1861, were asserted.

The Governments existing between 1853 and 1861 held that the word "proceeds" in the Act. 16 Vict, Cap. 159, meant the amount received each year that the Improvement Fund was in existence, in payments as well for lands sold before 14th June, 1853, as for lands sold after that date.

57. On 6th March, 1861, the following Order in Council was passed : "On the recommendation of the Honourable the Commissioner of Crown Lands the committee advise that the Order in Council of 7th December, 1855, authorizing the payment of the Improvement Fund created by Land Act, 16 Vict, Cap 159, be rescinded." By this they meant to put an end to all payments to the Improvement Fund and no proportion of any money received after the passing of this Order was passed to that fund.

58. In 1863, application having been made to the Government for the proportions of the proceeds of sales of Crown Lands and Common School Lands collected after the abolition of the Fund, the then Crown Lands Comissioner, reported as follows :—

"The undersigned has the honour to submit the following statement and recommen-
"dation with reference to the improvement fund for Canada West, authorized by 16 Vict.,
"c. 159, s. 14, (1853).

"The said fund was applied by Order in Council of the 26th July 1856, which order
" had a retrospective action as far back as the date passing the above Act, August 1853.

"The said fund has been regularly paid (with the exception of some few balances
"that remain to certain municipalities) down to the end of 1859, at which date the then Com-
"missioner of Crown Lands considered it expedient to stop further payments to the fund.
"With this view he omitted in the amended Land Act of 1860, the clause authorizing
"the creation of the fund, but in March 1861, it was ascertained that the authority for the
' fund existed at the date of the amended Land Act in the School Act, and not in the
"Land Act, as had been supposed. On the 6th March 1861, an Order in Council was
" passed rescinding that of the 26th of July 1856.

"It appears to the undersigned that the improvement fund continued to accrue
"legally, and may be fairly claimed by the various municipalities of Canada West, down to
"the above date of 6th March 1861, and he therefore respectfully recommends that the
"distribution thereof be made to them accordingly.

(Signed) WILLIAM McDOUGALL,
Commissioner,

Crown Lands Department,
17th September, 1863.

59. It will therefore be seen that the Honourable Mr. McDougall advised that the municipalities should have the benefit of all collections down to the passing of the Order in Council.

The Hon. E. B. Wood, in his correspondence with Sir Francis Hincks, Minister of Finance, contended that a fifth of all moneys received at any time in payment for Crown lands and a fourth of all money received at any time in payment for Common School lands, sold between 14th June, 1853, and 6th March, 1861, belonged to the Improvement Fund, and that the municipalities were entitled to those proportions of the moneys received in payment for such lands between the 6th March, 1861, and 30th June, 1867. (Letter, Wood to Hincks 20th November, 1869. Ontario Sessional Papers, 1869, No. 28, page 50) (Letter, Wood to Hincks 22nd October, 1870, Ontario Sessional Papers, 1873, No. 37.)

The award of the Arbitrators under the B. N. A. Act established the correctness of Mr. Wood's contention.

60. In his correspondence with the Minister of Finance Mr. Wood did not prefer any claim on behalf of the Grammar School Townships. All the money received for the price of Grammar School lands after 31st December, 1855, had gone to the Grammar School Fund.

61. On the 27th July, 1868, A. W. Lauder, Esq., M.P.P., wrote to Hon. E. B. Wood, Provincial Treasurer, respecting the rights of Proton. Mr. George Matthews on behalf of the Treasurer replied: None of the special funds have as yet been handed over to this Department by the Dominion Government. As soon as the arbitration has taken place, those funds will be at once handed over but until that time they will be entirely managed by the Dominion. I have forwarded your letter to Ottawa, with the request that the information may be supplied at once.

62. The reply of the Auditor-General to the letter of Mr. Matthews was as follows :

AUDIT OFFICE, OTTAWA, September 3rd, 1868.

SIR,—I have the honour to acknowledge receipt of your letter of 1st inst. The Township of Proton was paid in 1862 $34, being its share of the fund of 1860. The fund is now abolished and the distribution of 1860 was the last under the old law. There is therefore nothing at the Credit of Proton.

I have the honour to be
Your obedient servant,

The HON. E. B. WOOD,
Treasurer, Toronto.

JOHN LANGTON.

63. Mr. Lauder's letter may be in the Finance or Audit Department at Ottawa, Mr. Langton seems to have regarded the application made by Mr. Lauder for Proton as a claim for a share of the proportion of the proceeds of Crown lands, of which comparatively a small part of Proton was composed, and in respect whereof Proton had had its share out of the Improvement Fund.

64. On the 24th November, 1869, Hon. Mr. Blake moved in the Ontario Legislative Assembly, and it was :

"Resolved. (1) That by the Land Act of 1853 it was enacted that it should be lawful for the Governor-in-Council to reserve out of the proceeds of the School lands in any county, a sum not exceeding one-fourth of such proceeds as a fund for public improvements within the county, to be expended under the direction of the Governor in Council and also to reserve out of the proceeds of unappropriated Crown lands in any county, a sum not exceeding one-fifth, as a fund for public improvements within the county, to be also expended under the direction of the Governor-in-Council.

" (2) That on the 7th December, 1855, an Order in Council was passed, reciting that applications had been made for aid from the Improvement Fund created by the said Act and directing that the Crown Lands Department should apprize the Inspector-General of the amount at the credit of each county for the proceeds of the sale of both Crown and School lands, so that the proportions accruing to the Improvement Fund might be set apart by the Receiver General for that purpose.

3. "That the petitions presented to this House on the subject of the Land Improvement Fund, be referred to a Select Committee, with power to send for persons and papers. (See *Ontario Journals* 1869, page 12)."

65. "In their report, which was presented to the House on the 10th of December, 1869, by the Chairman, Mr. Pardee, (*Ontario Journals*, 1869, page 83) this Committee said that when the Act 16 Vict., cap. 159, was passed

"There were large tracts of Crown and School lands in various counties unsettled, and "it was the policy of the Government to encourage the settlement thereof as much as "possible."

"That one of the greatest obstacles to settlement was the want of roads and bridges, "and it was in order to induce the speedy settlement of the county by providing means for "the construction of such works that the said Order and Act were passed."

"That shortly after the passing of the said Act, large numbers of persons purchased "and settled on the vacant Crown and School lands, and within a very few years they "were well settled, four-fifths of the School lands having been settled in 1853, 1854 and 1855."

"That the general belief and opinion of the settlers was, that they would be entitled "to have one-fourth of the price of School lands, and one-fifth of the price of Crown lands "expended within the municipalities, in the construction of roads and bridges."

"That this belief and opinion was entertained by several of the Crown lands agents "who sold the lands."

2. "That several of such agents stated to the intending settlers that if they became "settlers, one-fourth of the price of School lands, and one-fifth of the price of Crown lands "would be so expended as aforesaid, and that thus the price of their lands was practically "less than the stated price by these amounts, which would otherwise have to be raised by local taxation for the same purpose."

"That large numbers of settlers purchased on the understanding with the agents, "stated in the preceding paragraph, especially in the County of Bruce where the popula- "tion increased from 2,837 in 1852 to 27,494 in 1861."

"That no part of the Improvement Fund accruing since the 6th of March, 1861, "has been applied to the purposes of the fund."

"That large sums of money have, since 6th March, 1861, been received by the "Government of the late Province of Canada, from the sales of Crown and School lands "made between the date of the passing of the Land Act and the 6th March, 1861."

"That further large sums have been received on account of such sales by the "Government of Ontario, and further large sums remain due on account of such sales."

The Committee abstained from stating any opinion or making any recommendation, because they understood the Order of Reference to confine them to the ascertainment of facts for the information of the Legislature.

66. No motion for the adoption of this report was made in the session of 1869, which was near its close when the report was presented. But on the 13th December, 1870, the Legislature having assembled on the 7th of that month, Mr. Blake moved, and it was

"Resolved, that this House will, on Thursday next, resolve itself into a Committee "of the Whole House, to consider the following resolutions :—

1. "That this House concurs in the views expressed on the report of the select "committee on the Land Improvement Fund, made to this House last session."

2. "That the dealings of Government with settlers should be characterized by the utmost good faith."

3. "That it would not be in good faith for any Government to alter the arrange- "ments under which the Land Improvement Fund was constituted, and to receive the "purchase moneys of the lands, without providing for the due application in accordance "with such arrangements of the proper proportions of the proceeds of all sales made during "the continuance of the fund." (*Ontario Journals* 1870-1, page 13).

67. On the 16th December, the resolutions moved by Mr. Blake were under consideration.

Hon. E. B. Wood and other members of the Government, declared that they were as much in favor of satisfying the just claims of the municipalities, which they had insisted upon in the correspondence with the Dominion Government, and brought under the consideration of the arbitrators, as Mr. Blake and others who had spoken could be.

Mr. Blake stated that the Government having declared that justice would be done to the municipalities, he would withdraw his resolutions; what he sought in moving them having been attained. The order was accordingly discharged. (*Ontario Journals* 1870-1, page 18; see the *Globe*, 17th December, 1870.)

68. In the Estimates of the Session of 1870-1 (page 21) of the Ontario Legislature, appear the following items:—

"Moneys collected from the sale of Crown lands between the 1st day of July, 1867, and 30th June, 1870	$251,139 54
"Less four-fifths, leaving one-fifth to the Land Improvement Fund	200,911 63
	$50,227 91
"Less 20 per cent. for cost of collection and management	10,045 58
	$40,182 33
"Moneys collected from the sale of Common School lands between the 1st day of July, 1867, and the 30th of June, 1870	266,174 40
"Less 6 per cent. for sale and management	15,970 46
	$250,203 94
To be distributed as follows:—	
"One-fourth to the Land Improvement Fund	62,550 98
	$102,733 31
"Three-fourths to Dominion Government to be added to the Common School Fund	187 652 96
	$290,386 27

And in the Journals of that Session, 1870-71, page 189, appears the following record of the sums voted:—

"Item No. 72, to defray the expenses of the Land Improvement Fund	$102,733 31

69. No provision was made in the estimates or appropriations of 1870 for any amount to be paid to the Land Improvement Fund, on account of moneys collected from the sale of Grammar School lands.

70. But in the estimates submitted for the following year, during the session of 1871-72, (Ontario Sess. Papers No. 7, page 26, Statement No. 26) under the heading "Land Improvement Fund," appear the following items:—

"Moneys collected for the sale of Crown Lands, subject to the Land Improvement Fund, for the year ending 30th June, 1871	$50,828 59
"Less four-fifths, leaving one fifth to the Land Improvement Fund	40,662 87
	10,165 72
"Less 6 per cent. for cost of collection and management	809 94
	$ 9,555 78
"Moneys collected from the sale of Common School lands, subject to the Land Improvement Fund, for the year ending 30th June, 1871.	$53,880 33
"Less 6 per cent. for collection and management	3,232 81
	$50,647 52

To be distributed as follows :—

"One-fourth to the Land Improvement Fund.....		$12,661 88
"Three-fourths to the Dominion Government, to be added to the Common School Fund.....		37,985 64
"Moneys collected from the sale of Grammar School lands, subject to the Land Improvement Fund, from the 1st of July, 1867, to 30th June, 1871.....	$8,416 87	
"Less six per cent. for collection and management	505 01	
	$7,911 86	
"Less three-fourths, leaving one-fourth to the Land Improvement Fund	5,933 89	
	$1,977 97	$24,195 63
		$62,181 27

71. In the Journals of this Session, of 15th February (pp. 154-5), the appropriations on this account were passed in the form in which they appeared in the estimates with the heading :—"74. To defray the expenses of the Land Improvement Fund and Common School Fund, as follows :—" and in the words and figures in this paragraph hereinbefore written.

72. On enquiry at the Crown Lands Department the Commissioners were informed that since 1st July, 1867, the amount reserved in the case of Grammar School lands, as in the case of Crown lands and in the case of Common School lands, was in respect of the collections made on sales between 14th June, 1853, and 6th March, 1861. One-fourth is reserved in respect of Common School and Grammar School lands, and one-fifth in respect of Crown Lands. And, as will be seen hereafter, the townships have since been paid in such proportions.

73. In the *Globe* of the 1st February, 1872, the Commissioners found a report of a debate which had taken place on the 31st January, on matters relating to an election in South Grey, and especially as to what it was alleged had been done in Proton to affect that election. Hon. Mr. Blake, who was then leader of the House, in his speech said :—

"A question was raised with reference to the Grammar School lands and the im-
"provements upon them. The House knew that the Grammar School lands were not
"included within the provisions of the law and the Order in Council respecting the
"Land Improvement Fund.

"One of the townships in the County of Grey happened to be a township of Gram-
"mar School lands, and complaints were made in his (Mr. Blake's) hearing, that they
"ought to have a share in the Improvement Fund.

"On the 11th December, this letter was written by the late treasurer :—

"TORONTO, 11th December, 1871.

"MY DEAR SIR,—Since my return from South Grey and after considering the repre-
"sentations made by you in respect of the settlers in Proton (and others similarly
"circumstanced) on Grammar School lands, I have consulted with other members of the
"Government and they all agree with me that, on principle, no distinction should now
"be made between Grammar School lands and Common School and Crown lands in
"respect of the Land Improvement Fund.

"The amount of the Improvement Fund paid in since Confederation (1st July,
"1867) on Grammar School lands is being made up and will be included in the
"estimates of the present session and paid over to the respective municipalities entitled
"to the same.

"Yours respectfully,
"A. W. LAUDER, Esq., "E. B. WOOD.
"Durham."

Hon. Mr. Wood afterwards said, in explanation of this (reported in the *Globe* of same date) that :—

"The township of Proton was nearly all Grammar School lands, and that therefore "the people of that township got no portion of the Improvement Fund. He thought "this was an injustice, and the Government subsequently agreed that those townships "which were composed largely of Grammar School lands should have a share in the "Improvement Fund.

"This was done within the wording of the statute, and it was not done to influence "a single vote, but as an act of justice."

74. Speaking on another occasion of the claims of the municipalities to the amounts due to the Improvement Fund, on account of moneys received from 6th March, 1861, to June 30th, 1867, in payment for Crown lands and Common School lands sold between the 14th June, 1853, and 6th March, 1861, Mr. Wood contended that these claims could be enforced in the courts of law. (See report in the *Globe* 17th December, 1870). He does not seem to have entertained such views with respect to any proportion of the proceeds of Grammar School lands sold within that period. He, and the others who spoke, seemed to think that Grammar School lands never had been "within the provisions of "the law and of the Order in Council respecting the Improvement Fund."

75. The first payment to the Grammar School townships after Confederation was made in 1872, and included what the Hon. Mr. Wood described as "the amount of the Improvement Fund paid in since Confederation (1st July, 1867) on Grammar School lands." Payments have been regularly made every year since, of one-fourth of the moneys received on account of Grammar School lands sold from June, 1853, to March, 1861. These sums are placed in the estimates each year, and are duly appropriated before they are paid.

76. The advantageous position in which the Grammar School township lands have been placed, being that they have been allowed reservations on sales made between 14th June, 1853, and 6th March, 1861, although the Government of the old Province of Canada had stopped the reservation after 31st December, 1855, although even if the Order-in-Council of 30th October, 1858, be held not to have been valid in so far as it was retroactive, yet it must be held to prevent the reservation of any proportion of the proceeds of Grammar School Lands sold after its passage; and that the reservation was increased from one-fifth to one-fourth of the amount of the collections.

77. The amounts paid to Proton since Confederation are as follows :

To June 30th.	Paid to Proton.		Amounts paid in said years to all other Grammar School townships.
1871	$1,097 12	See Sess. P., 1873, pt. 2, No. 3, page 139	$ 880 85
1872	481 76	See Sess. P., 1874, pt. 2, No. 4, page 145	1,171 19
1873	238 90	See Sess. P., 1875-6, pt. 1, No. 2, page 159	454 78
1874	755 97	See Sess. P., 1877, pt. 1, No. 1, page 144	592 22
1875	742 83	See Sess. P, 1873, pt. 1, No. 1, page 165	705 36
1876	386 52		
1877	669 28	See Sess. P., 1879, pt. 1, No. 1, page 211	428 90
1878	600 87	See Sess. P., 1880, pt. 1, No. 1, page 218	25 27
1879	160 39	See Sess. P, 1881, pt. 1, No. 1, page 231	26 85
1880	13 07	See Sess. P., 1882, pt. 1, No. 1, page 232	
1881	582 32	See Sess. P, 1883, pt. 1, No. 1, page 248	204 68
1882	208 49	See Sess. P., 1884, pt. 5, No. 15, page 261	24 70
1883	249 21	See Sess. P., 1885, pt. 5, No. 16, page 273	85 40
1884	74 05	See Sess. P., 1886, pt. 4, No. 18, page 298	348 81
1885	89 52	See Sess. P., 1887, pt. 4, No. 15, page 322	74 43
1886	180 52	See Sess. P., 1888, pt. 3, No. 15, page 266	nothing
1887	189 92	See Sess. P., 1889, pt. 3, No. 15, page 273	nothing
1888	131 28	See Sess. P., 1890, pt. 4, No 18, page 274	
1889	nothing	See Sess. P., 1891, pt. 5, No. 19, page 283	236 30
1890	103 67		540 70

78. The amounts paid in respect of Grammar School collections are much larger than they would have been if according to the practice followed from 1855 to 1859 by the Crown Lands Department and the Inspector-General, the amount reserved from the proceeds of "Grammar School Lands" were one-fifth, and if the Order in Council of 30th October, 1858, were held to be so far valid that no part of the proceeds of lands sold after its passing should go to the Improvement Fund.

79. An Act passed by the Ontario Legislature in 1869 (33 Vict., cap. 9, sec. 5) provided that—

"5. The Upper Canada Grammar School Income Fund, and all moneys arising from "investments made on account thereof, and the income and revenue derived from the "Upper Canada Grammar School Fund, and from the Upper Canada Grammar School "lands, and from the Upper Canada Building Fund and Marriage Licenses belonging "thereto, and from the Common School Fund and the Common School lands, shall form "part of the Consolidated Revenue Fund of the Province of Ontario."

80. The claim of Proton to a proportion of the moneys paid between December, 1856, and 30th June, 1867, on account of the price of Grammar School lands in that township sold between December 22nd, 1856, and 30th October, 1858, inclusive, having been urged in the early part of the year 1889, a Case was submitted to Christopher Robinson, Esq., Q.C., who had been selected by the municipalities of Huron, Grey, and Bruce to represent their claim against the late Province of Canada in respect of their claims on the Improvement Fund, reserved from Crown Lands prior to Confederation. His opinion, dated March 31st, 1890, was as follows:

MR. ROBINSON'S OPINION.

"I am asked whether in my opinion the Township of Proton, in respect of the "Grammar School lands within that township, is or was entitled to any appropriation "under the 16 Vict., c. 159, s. 14, for what is generally described as the Upper Canada "Improvement Fund.

"In this township, as I am informed, 47,000 acres were set apart for Grammar "School lands in or before 1827, in accordance with a direction of King George III. "recited in 2 Vict., chap. 10, that 'a quantity of the waste lands of the Crown' should be "set apart for the endowment of such schools.

"The lands in Proton were first opened for sale on the 22nd of December, 1856.

"An Order in Council was passed on the 30th of October, 1858, which recited a "report from the Minister of Agriculture of the 16th April, 1857, stating that under 16 "Vict., c. 159, an Order in Council was passed appropriating one-fourth of the Grammar "and Common School Funds for public improvements within the townships whence the "fund is derived; that the fund derived from the sales of school lands up to the 31st "December, 1855, had been appropriated; and recommending for reasons given, that in "future none of the proceeds of the sales of the Grammar School lands in Upper Canada "be diverted from the purpose for which they were originally intended, save the pro-"portion of the sales up to the 31st December, 1855. The Committee of the Executive "Council recommend that the fund arising from Grammar School lands be reserved as "suggested by the Minister of Agriculture, and their report was approved by the Gov "ernor-General in Council on the 30th of October, 1858.

"No such report or Order in Council of the 16th April, 1857, as recited, can be "found, and none making any such appropriation of Grammar School funds, as it is said "to have made. There is an Order in Council of the 16th of April, 1858, on the subject "of the Improvement Fund, and one of the 28th July, 1856; but neither of them can "apparently be the one referred to in the Order of Council of 30th of October, 1858.

"The Order in Council of 28th July, 1856, directs only that the funds derived from "the sales of land in each township applicable to the Improvement Fund, be disposed of "for the purpose specified by the municipal council of each municipality. Such council to "report half yearly to the Minister of Agriculture.

"As has been already mentioned there were no sales of land in Proton until Decem-"ber, 1856. The Order in Council of 1858 stopped all contributions to the Improvement "Fund from Grammar School lands subsequent to 1855. It would seem, therefore, that "no claim can be made by that township, because there were no sales of Grammar School "lands in it until after the period at which the appropriation of the proceeds of such sales "to the Improvement Fund was put an end to.

"This appears to make any further opinion unnecessary.

"With regard to the more general question whether Grammar School lands are "within the 16 Vict., sec. 14, I think, looking to the general history of, and legislation "with regard to, such schools and their land endowments, so far as I am informed of it, "that there is much room for doubt, and however this may be, in view of the claim as "presented to the arbitrators and their award under the British North America Act "there would seem to be great, if not insuperable difficulties in establishing with regard "to the proceeds of Grammar School lands any such claim as is now being urged with "regard to the proceeds of Crown lands.

"The claims in respect of School lands and the Improvement Fund in connection "with them was presented to the arbitrators, as I understand, and disposed of by them. "I do not think it can now be re-opened; and the Grammar School lands cannot, as it "seems to me, be regarded as unappropriated Crown lands.

(Signed) C. ROBINSON.

Toronto, March 31st, 1890.

81. If the words "School Lands" in Section 14 of 16 Vict., cap. 159, were not meant to include Grammar School lands, but as is contended, referred solely to Common School Lands, then the payments made to the Improvement Fund out of the proceeds of Grammar School lands in 1853, 1854, 1855, 1856, and 1857 were made improperly and without sufficient legislative authority or sanction, and Proton has no legal claim to any proportion of the moneys paid before 1st July, 1867, for Grammar School lands in that township.

82. If the Order in Council of 30th October, 1858, legally abolished the Improvement Fund in regard to Grammar School sales after 31st December, 1855, the Township of Proton has no legal claim to any proportion of the moneys received before 1st July, 1867, for Grammar School lands sold in that township.

83. In either case the township would have no other claim than the circumstances under which the Grammar School lands of that township were sold should give it, to the consideration of the Legislature.

These facts are:—

That when those lands were sold—in December, 1856—the Act 16 Vic., cap. 159, had been three years and a half in operation, and the Order in Council of 28th July, 1856, directing that the Improvement Fund be "distributed and disposed of by and through the municipal councils," had been in operation for more than six months.

That by the statement of the Improvement Fund for the period from 14th June, 1853, to 30th June, 1855, submitted to the Legislature in the Session of 1856, in accordance with the provisions of the Act 16 Vict., cap. 159, one-fifth of the "proceeds" of Grammar School lands for that period was credited to the Improvement Fund.

84. The Commissioners took evidence at Hopeville, to ascertain what took place at the sale of Proton Grammar School lands on 22nd December, 1856. It appeared that there was an expectation entertained by some of those present that there would be something coming back for improvements.

The agent, Jackson, was not authorised to make any statement to that effect. A reference to the evidence has been set out at paragraph 25.

85. The sales of the Grammar School lands in the Township of Proton, on 22nd December, 1856, and the sales of January, 1857, are all entered in the books of the

Crown Lands Department as sales of 1857. The promised price of the lands sold at both sales was, according to the statement obtained from the Crown Lands Department, $188,350.95; the amount paid as first instalment was $37,670.19. Of this amount then paid, $7,534.05 is given as available for the improvement fund.

86. The total amount collected in 1858 on account of lands in Proton sold in that year and as a second instalment of the price of lands sold in 1856-7 was $2,916.49; of which $583.30 appeared to be the amount available for the improvement fund, but this sum was not passed to the credit of the improvement fund.

87. How much was paid on account of the price of those lands during the subsequent years—to 30th June, 1867—the account of the Crown Lands Department will show.

All of which is respectfully submitted.

T. W. ANGLIN,
ÆMILIUS IRVING.

March 29th, 1892.

HOPEVILLE—PROTON.

TUESDAY, 29th September, 1891.

COMMISSION TO T. W. ANGLIN AND ÆMILIUS IRVING, Q.C.

Present: The Commissioners and the following named persons; principal persons of the Township of Proton and vicinity:—

Mr. Mackechnie, of Durham, M.P.P for South Grey.
James Carson.
S. Rogers, Reeve of Proton.
Rd. Mack, Councillor.
James Corbett, Councillor.
Joseph McArdle, Councillor.
Duncan McMillan, Past Reeve and J. P.
Peter McGregor, Past Reeve.
John Abbott, Past Deputy Reeve.
Robert Russell, Treasurer.
James Cavanagh, Township Clerk.
Patrick Shaw, Past Deputy Reeve.
Alexander McPhail, Ex-Reeve.
Thomas Campbell, Ex-Councillor.
James Buckley, Ex-Councillor.
John Dazell.
John Mackechnie.
John Campbell.
Richard Parslow.
Neil Mackechnie.
James Murphy.
Thomas McQuae (Mcquha).

Mr. MACKECHNIE.—Have not any claim prepared, but will have one ready at the end.

The Township of Proton consider that they have a right to a refund out of the sales made of Grammar School Sales.

Mr. Mackechnie says, that the claim is from December the 22nd, 1856, up to the time of the Order-in-Council in October, 1858, which stopped further application from Grammar School Sales; also up to the time that the Fund was abolished in 1861.

Mr. Mackechnie says, that in respect of sales between December, 1856, and October, 1858, or March, 1861, Proton has not received anything, and that a refund should be made thereon: neither for the receipts before 1861.

Mr. Mackechnie reads and refers to Mr. Pardee's Report of 1869, and draws attention to the evidence of George Jackson, M.P., John Eckford, Samuel T. Rowe, Henry Brown, James Rae, Thomas Adair, James Somerville; A. McNab, Crown Land Agent, Southampton; James Trow, John McDermid, Benjamin Bothwell, James Stinson, Duncan Saunders and Andrew Russell.

Mr. Mackechnie reads Mr. Jackson's evidence specially.

JAMES CARSON, *sworn* :—There was a sale of land by George Jackson, in the Orange Hall, at Durham. I was present. George Jackson took out centre window of the Orange Hall and stood on the sill. People stood on north side of the building. He said there would be a certain discount. When asked what it was, he replied he was not able to say what it would be ; it was a discount—a refund.

Sales at this time were made of lands—Derby, Sullivan, Bentinck, Artemesia, Sullivan and Proton, I think. I do not remember the year, but it was at the sale at the Orange Hall ; there were two sales and one was at the Orange Hall. I understood that the other sale was at William Jackson's private residence. I do not know which sale was first ; he, George Jackson, mentioned Grammar School and other lands.

The land I bought then at that sale was in Derby. The sale was, I think, in 1856. The land in Derby might have been bought in my father's name, John Carson.

I understood the refund was for public improvements in the township.

(Signed) JAMES CARSON,
Durham P.O.

DUNCAN MCMILLAN, *sworn* :—The land sales I knew about in 1857 ; there were two land sales, one in the latter part of 1857, the other in the beginning of 1858.

The sale I was at, was in Mr. Hunter's big hall or sitting-room. I was among those who had squatted in Proton before then, Nos. 13 and 12 lots, on the 16th concession. I put up my claim, and the Squatters claim was acknowledged, and my land was not put up to sale. I was told that a refund of 5 per cent. for the opening up of the township was to be made.

The sale of lands in the Township of Proton was put up in a different way—the fourth part of the money was to be paid down, the rest in four equal instalments.

I went to William Jackson, who was acting for his brother George, and I asked him about the Proton sale, and he said that £1,600 was what would be coming out of that day's sales, for expenditure and improvements in Proton.

I have enquired repeatedly of Jackson, both George and his brother William, why the money was not forthcoming, and all I could get was, that on one day George Jackson gave me a copy of the Order in Council, which kept the money from coming to us ; this was the year Joseph C. Morrison ran for Grey, as I handed to him this copy of the Order in Council when he was going out canvassing.

The time that William Jackson gave me the information about the £1,600 coming to Proton was after the day of sale, but at some time within the four years within which the Proton land had to be paid. When I stated 5 per cent. I meant one-fifth of the money, and I understood the land in Proton to be Grammar School Land.

The sales I referred to were in 1857 and 1858 ; the lands I referred to in Proton were not all sold at the first sale in 1857, but at an adjourned sale in 1858 ; both sales were in the same place, at Hunter's house ; William Jackson was the salesman at the sales, he was acting for his brother.

(Signed) DUNCAN McMILLAN.

NEIL MACKECHNIE, *sworn* :—I heard William Jackson the land agent, say on the day of the sale, that there was some money coming back to us : this was in Durham at the sale of the lands in Proton.

He said one-fifth was coming back to us ; I did not buy at that sale ; I am 36 years in Proton, and this sale was one year after I came in.

The circumstances according to my recollection is, that I was present at the first day's sale, and then Jackson sold Proton lands that day and on the following day, and that was the second sale ; I did not know of any other sales, because I, being a squatter had had my place reserved, and then I left Durham and came to my place in Proton ; I had no other interest than to secure my own place, and therefore was not a bidder ; whether other sales after I do not know.

Jackson announced publicly that money was coming back to Proton ; I heard Jackson say so, as well as those men in front who passed the word back.

(Signed) NEIL MACKECHNIE,
X His mark.

William McClelland, *sworn* :—I was at the first sale of the Township of Proton ; this, as far as my memory will go, was in 1856, but I am quite certain that it was the first sale that took place, that I was at.

I cannot say that I heard the agent William Jackson make the statements to which Mr. Neil Mackechnie has testified.

Most of the land in Proton was sold that day, but some was not sold and there was a second sale ; I do not remember whether the first sale was continued a second day ; the second day we paid the instalments ; there was another sale about three weeks after ; I was not at it, but I remember neighbors who went to the second sale and got land.

We were thinking, (by which I mean I heard) that we were to get something back ; I heard people speaking generally that something was to come back.

I bought and bid under the expectation that money was to come back ; I knew that the lands were Grammar School lands.

(Signed) WILLIAM McLELLAN.

Thomas Campbell, *sworn* :—I was at the first sale of the Proton lands held in Durham ; it was in 1856 I think ; I am almost certain in December, 1856 ; William Jackson sold the lands ; I heard him make no statement ; I was outside when the articles of sale were read.

It was generally reported that something was to come back ; I can hardly answer whether I bid on an expectation that money was to come back ; I had recently come from Scotland and did not know Canadian rules ; the sale was in Mr. Hunter's bar-room or sitting-room, in Durham, on the east side of the road.

I do not think I was at the second sale ; I bid at the first sale and got land in my own name.

I understood that the old survey was Crown land, and had been given out for occupation some years earlier ; no sale of old survey that day, and that the sale in December, 1856, of which I have been speaking, was of Grammar school land only.

Afterwards—some year or years after—a sale took place of the lands of the old survey which had not been taken up ; these were Crown lands.

(Signed) THOMAS CAMPBELL.

Daniel Rice, *sworn* :—I attended at the first sale of lands in Proton, at Durham, in Hunter's ; I am confident it was the first sale, but I don't know the date ; I was not in at any time at Hunter's when the agent, Jackson, made a statement.

On the first day I bought a Proton lot in my own name, and the day after made a payment thereon.

It is more than I am aware of if, on the first day of the Proton sale, any other township lands were sold.

I bought my lot at auction ; I always heard that there was money coming back.

(Next preceding paragraph withdrawn, as it was a very indefinite rumor he had heard.)

I have to explain that I did not bid at the sale on the lot I got, because it was bought by another man and I got it from him ; but when I payed the money the day after it was made out in my name, *i.e.* the location ticket.

(Signed) DANIEL RICE,
× His mark.

JOSEPH MCARDLE, *sworn* :—I was present at the general lands sale of Proton—the new survey portion in 1856 ; it was held in Hunter's hotel on the 22nd and 23rd December, 1856.

I bought two lots in Proton at auction—a public sale ; I had been in Proton two years then and squatted on these lands ; I came back and forward to do the improvements ; I got to Durham the evening before the sale ; I had instructions from two members of Parliament that these being Grammar school lands. there would be reductions made for the improvement on roads ; I got my lots knocked down at upset price—two dollars per acre—second morning of sale.

I was unable to claim as a squatter, as I could not get my affidavit in on the usual grounds on which squatters claim.

I always heard that there was to be a reduction, by which I mean that part of the money was to be paid back for improvements in the township ; I went to Mr. Jackson before the land sale but could not get much satisfaction ; but understood from him there was to be something of this.

The first day of sale the place was crowded, but I did not hear the public statement which was reported to have been made ; I was not in much the first day because I was endeavoring to get up my affidavit of possession as a squatter, and moreover, they were selling in a different part of the township from that in which I was interested.

On the second morning I purchased, and paid on my sale in my name.

(Signed) JOSEPH McARDLE.

DUNCAN MCMILLAN comes forward and says : I wish to say that the sale at which I was present was in December, 1856, and that the previous date given by me referred to a date at which I had made a payment of money, and I correct my previous evidence so far—as to read, one sale in December, 1856, and the other sale in the beginning of 1857.

(Signed) DUNCAN McMILLAN.

ROBERT RUSSELL, Treasurer of Proton, *sworn* :—I have been treasurer for about the past nine years,—Dundalk P.O. Statement A I produce as all the information I am able to find in the Proton books, which I have in my possession, to wit : the books since township organized in 1857 to the present time ; and there have been no payments since the statement was dated, 25th January, 1889.

(Signed) ROBERT RUSSELL.

A.

DUNDALK, January 25th, 1889.

JOHN BLYTHE, ESQ., M.P.P. :—

DEAR SIR,—I find the following entries in the books of the township treasurer of Proton :—

1874, Sept. 28th,	From Treasurer of Ontario Municipal Loan Fund	$1,000 00
1874, Nov. 2nd,	" " " "	1,500 00
1876, Jan. 31st,	From Provincial Treasurer as surplus distribution of Municipal Loan Fund	2,132 80
1876, Aug. 7th,	From Treasurer of Ontario L. I. Fund, Crown Lands ..	5 85
" "	" " " Grammor school land	742 83

These are the entries just as I find them, and I hope you will be able to get Proton its just share of the money due it.

Yours respectfully,

ROBERT RUSSELL,
Treasurer of Proton.

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